FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 416

Application for Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California.

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IN THE

Supreme Court of the United States

October Term, 1960

No. .....

THE PEOPLE OF THE STATE OF CALIFORNIA on the relation of the City of San Marino; and the CITY OF SAN MARINO,
Respondents,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, CALIFORNIA, a Corporation Sole; REVEREND WM. FOX, Pastor of Saints Felicitas & Perpetua Church, for and on behalf of THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, a Corporation Sole, and ARCHDIOCESE OF LOS ANGELES EDUCATION & WELFARE CORPORATION, a Corporation,
Petitioners.

CITY OF SAN MARINO, a Municipal Corporation,
Plaintiff and Cross-Defendant in Certain Pleadings,

and

SOPHUS J. PRESS as Building Inspector of the City of San Marino,
Cross-Defendant,
RESPONDENTS,

vs.

THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, CALIFORNIA, a Corporation Sole; REVEREND WM. FOX, Pastor of Saints Felicitas & Perpetua Church, for and on behalf of THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, a Corporation Sole, and ARCHDIOCESE OF LOS ANGELES EDUCATION & WELFARE CORPORATION, a Corporation Sole,
Defendants, Cross-Complainants and Petitioners in Certain Pleadings.
PETITIONERS.

Petition for Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California.

Petitioners pray that a writ of certiorari issue to review the judgment of the District Court of Appeal of the Second Appellate District of the State of California, entered in the above entitled cases on May 5, 1960.

Citations to Opinion Below.

The opinion of the California District Court of Appeal has been officially reported in 180 Advance California Appellate Reports page 684; it has also appeared in 4 California Reporter page 547. It is reprinted here as Appendix I.

A "Decision on Cross-Complaint in so far as same is a Petition for Writ of Mandate" was written by one of the judges in the trial court (the Superior Court of the State of California in and for the County of Los Angeles) and appears in the record in the Clerk's Transcript of No. Pasa. C-5682 at page 33. It is reprinted here as Appendix V. (The formal judgments of the Superior Court in both cases are also reprinted in the Appendix, as Appendices VI and VII.)

Jurisdiction.

Two cases were and are here consolidated. The decision of the District Court of Appeal of the State of California was filed on May 5, 1960. Said decision affirmed in every respect the judgments of the Superior Court of the State of California in and for the County of Los Angeles. Petitioners thereafter filed Petitions for Rehearing. On June 1, 1960, said District Court of Appeal filed its "Modification of Opinion on Denial of Rehearing." (Reprinted here as Appendix II.)

A Petition for Hearing by the California Supreme Court was then timely filed by petitioners. The Petition was denied by order dated June 29, 1960 (reprinted here as Appendix III), and this Petition for Writ of Certiorari is filed within 90 days thereof.

The jurisdiction of this Court is invoked under 28 U. S. C. A. §1257(3).

Questions Presented.

1. Whether, on the record here presented, where other religious denominations and commercial establishments were granted the precise zoning variance here denied to petitioners, there is discriminatory enforcement by respondents of their zoning ordinances in violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution.

2. Whether, on this record, where petitioners' R-1 lot was used for parking of vehicles and for recreation for school children, respondents may enjoin these uses of petitioners property which were long acquiesced in and integral to the exercise of petitioners' religious and educational activities and institutions.

Constitutional Provisions Involved.

The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution are involved:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."